

# STATE OF LOUISIANA LEGISLATIVE AUDITOR

**City of Shreveport -  
Convention Center**  
Shreveport, Louisiana

December 17, 2003



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**Daryl G. Purpera, CPA, CFE**

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December 17, 2003

**THE HONORABLE KEITH HIGHTOWER**  
**MAYOR**  
**CITY OF SHREVEPORT**  
Shreveport, Louisiana

Transmitted herewith is our investigative report on the City of Shreveport - Convention Center. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our finding and recommendations, as well as your response. Copies of this report have been delivered to those authorities as required by state law.

Respectfully submitted,

Grover C. Austin, CPA  
First Assistant Legislative Auditor

DGP:EKL:SDP:ss

[SHREVPT03]

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# Executive Summary

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## City of Shreveport - Convention Center Investigative Audit Report

### **Finding** (*See pages 7-20.*)

During March 1999, the City of Shreveport (City) began a project to build a 350,000 square foot convention center. The City has accumulated over \$105 million in available funds for this project and has expended over \$24 million. The project has been hampered by delays, poor accountability, and a possible violation of the public bid law.

The available funds include bond proceeds of \$85,000,000, interest earnings of \$12,899,015, \$2,990,805 from the sale of property, and \$4,500,000 received as a settlement from the city's previous construction contractor. The City has expended \$24,012,769; 31% for design engineering, 27% for the purchase of land, 17% for construction, and 19% for environmental remediation and consultation. The remaining 6% was spent on legal fees, demolition, fencing, and miscellaneous expenses. In addition, the City has paid \$8,470,000 in principal and \$15,838,592 in interest on the bonds.

The primary design engineering costs were for the services of an architect. However, the City allowed a 25% markup based on a complexity factor to be included in the architect's fee though no documentation supported such an increase. Also, the City did not require the architect to specify the amounts being charged for the services of subcontractors or require the architect to demonstrate how such charges were derived and whether they were supported by subcontractor charges to the architect. In addition, the City did not require that the architect provide written documentation or work product of the subcontractors thereby demonstrating the value and quality of these services.

The environmental remediation and consultation costs were incurred through agreements with environmental engineers that included the following deficiencies:

- Though a portion of the work was construction, the agreements were not written contracts as required by state law, Revised Statute (R.S.) 38:2241 A.(1).
- Contractors and subcontractors were not required to post performance bonds protecting the City from loss.

- The environmental engineer hired by the City hired subcontractors to do work that is considered (Attorney General Opinion 03-0108) “public works,” which is required by state law to be competitively bid; state law was not followed.
- The environmental engineer hired a subcontractor. Then the subcontractor hired a subcontractor. This relationship resulted in multiple-cost markups.

In addition, the City purchased land for the Riverfront Park extension project using bond funds dedicated for that purpose. Should the City later decide to use a portion of this land for the convention center, the City will be required to reimburse \$539,480 of these dedicated funds to the Riverfront Park extension project.

### **Recommendations** (*See page 21.*)

The City of Shreveport should appropriately monitor the expenditure of public funds in the completion of its convention center project by:

- (1) complying with the public bid law;
- (2) determining the appropriateness of the architect’s 25% complexity factor markup and appropriately documenting this determination;
- (3) ensuring all work invoiced is accomplished and adequate supporting documents have been received before payment is made;
- (4) requiring adequate documentation from contractors to support their billings and work performed and the billings and work of subcontractors; this documentation should be sufficient to enable the City to ensure that it has received services commensurate with the public funds expended;
- (5) seeking the refund of \$197,533 from ALTEC for the overpayment on its markup;
- (6) determining the exact cost of land allocated to the convention center from the Riverfront Park extension project and reimbursing the proper amount;
- (7) ensuring all contracts are in writing and include a description of work to be performed, the work to be done by related parties, related parties’ markups, completion dates, performance terms, and licensure by the Louisiana State Licensing Board; and
- (8) consulting with the state Office of Facility Planning for guidance in developing architectural contracts.

## **Management's Response (*See Attachment I.*)**

The City agrees that "the project has been hampered by delays" and has been a complicated project as a result of necessary legal actions, extensive environmental remediation, and an unexpected financial collapse of the construction manager. However, the City strongly disagrees that there has been "poor accountability, and a possible violation of the public bid law."

The City's original environmental consultant, Jones Environmental, Inc. (JEI), estimated the remediation costs at approximately \$5 million. After the City became concerned with lack of quality with the work product and the excessive charges and estimates of JEI, the City replaced JEI with ALTEC. ALTEC completed the remediation and site work for a savings of \$3.29 million to the City.

The City, through the aggressive actions of the mayor and his administration, received \$4,500,000 from the contractor's bonding company. In addition, the cost for the convention center and garage was approximately \$6,000,000 less than the original contract. The taxpayers have received an approximate savings of \$10.5 million in construction costs alone. These aggressive actions and savings of approximately \$13.8 million are hardly a result of "poor accountability."

The City agrees with the recommendations of the auditor but takes issue with two of the recommendations.

The City believes that the architect's 25% complexity factor is appropriate because the services provided were more than core architecture and engineering services. In addition to these standard services, the design team acted as a project manager to assist in site location, environmental issues, railroad relocation, hotel development options and other valuable necessary services.

The City's agreement with ALTEC of 10% markup was only for reimbursable expenses as described in an ordinary architect/engineering contract (i.e., copies, analytical testing, etc.). The City was provided by ALTEC with a scope of work and budget estimate for all other work and did not have an agreement regarding "markup" for any of that work.

Ken Antee (Chief Administrative Officer) has stated on numerous occasions that he reached an agreement with ALTEC that "markups" would only be 10%. However, he believes that there has been a misunderstanding as to the definition of "markups." It was never the intention of Ken Antee nor ALTEC that their fee and general condition would be limited to 10%.





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# Background and Methodology

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The City of Shreveport (“City”) was incorporated pursuant to Act No. 67, which was enacted by the Louisiana Legislature on March 20, 1839. In May of 1978, the present City charter was adopted which established a mayor-council form of government. The City provides a full range of municipal services as authorized by the charter. These include police and fire protection, emergency medical services, public works (streets and waste collection), public improvements, water and sewer services, parks and recreation, planning and zoning, public transportation, social, cultural and general administrative services. During 1999, the City began a project to build a convention center and related facilities.

The legislative auditor received information indicating that certain transactions of the convention center project were not properly performed in accordance with state law. This investigative audit was performed to determine the propriety of these transactions.

The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the City; (2) interviewing other persons as appropriate; (3) examining selected documents and records of the City; (4) making inquiries and performing tests to the extent we considered necessary to achieve our purpose; and (5) reviewing applicable state laws.



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# Finding

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During March 1999, the City of Shreveport (City) began a project to build a 350,000 square foot convention center. The City has accumulated over \$105 million in available funds for this project and has expended over \$24 million. The project has been hampered by delays, poor accountability, and a possible violation of the public bid law.

The available funds include bond proceeds of \$85,000,000, interest earnings of \$12,899,015, \$2,990,805 from the sale of property, and \$4,500,000 received as a settlement from the City's previous construction contractor. The City has expended \$24,012,769; 31% for design engineering, 27% for the purchase of land, 17% for construction, and 19% for environmental remediation and consultation. The remaining 6% was spent on legal fees, demolition, fencing, and miscellaneous expenses. In addition, the City has paid \$8,470,000 in principal and \$15,838,592 in interest on the bonds.



Proposed Convention Center

## ARCHITECT

The City entered into an \$8.2 million contract with an architect to design and oversee a substantial portion of the project including subcontractors. The City's contract with the architect is unclear as to the actual computation of charges. In addition, the contract does not provide a means for the City to ensure that it has received the services of the architect's subcontractors or that the City has paid an appropriate amount for these services. For three of the architect's subcontractors, there was little documented work product produced that would have afforded the City the opportunity to ensure that it paid only for services actually received and for services meeting expected quality standards.

## ENVIRONMENTAL

The City also entered into agreements with two environmental engineers, Jones Environmental and ALTEC Environmental Consultants. These agreements included the following deficiencies:

- Though a portion of the work was construction, the agreements were not written contracts as required by state law, R.S. 38:2241 A.(1).<sup>1</sup>
- Contractors and subcontractors were not required to post performance bonds protecting the City from loss.

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<sup>1</sup> R.S. 38:2241 A.(1) provides, in part, that whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties.

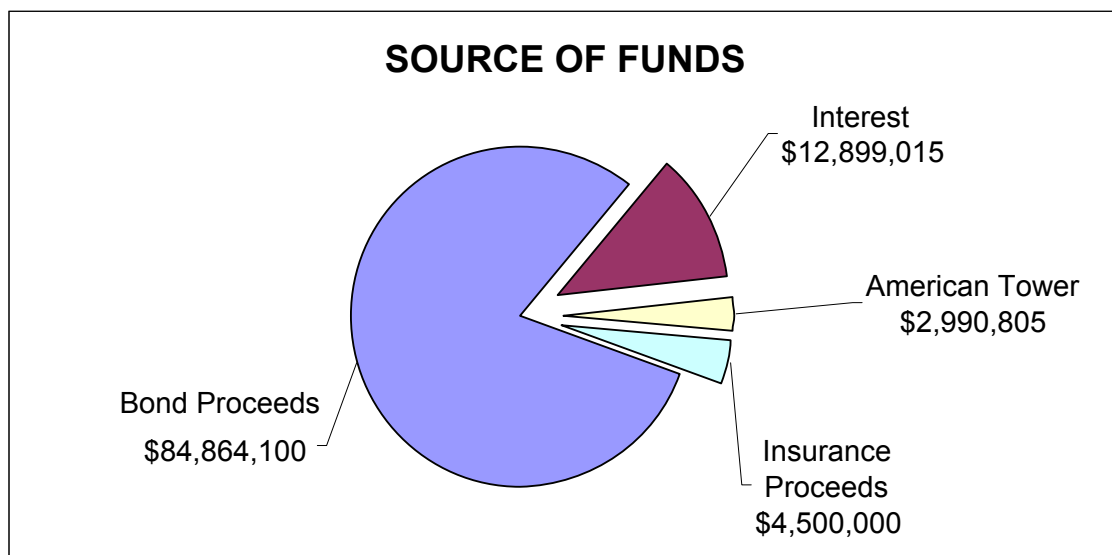
- The environmental engineer hired by the City hired subcontractors to do work that is considered (Attorney General Opinion 03-0108) “public works,” which is required by state law to be competitively bid; state law was not followed.
- The environmental engineer hired a subcontractor. Then the subcontractor hired a subcontractor. This relationship resulted in multiple-cost markups.

#### **LAND**

In addition, the City purchased land for the Riverfront Park extension project using bond funds dedicated for that purpose. Should the City later decide to use a portion of this land for the convention center, the City will be required to reimburse \$539,480 of these dedicated funds to the Riverfront Park extension project.

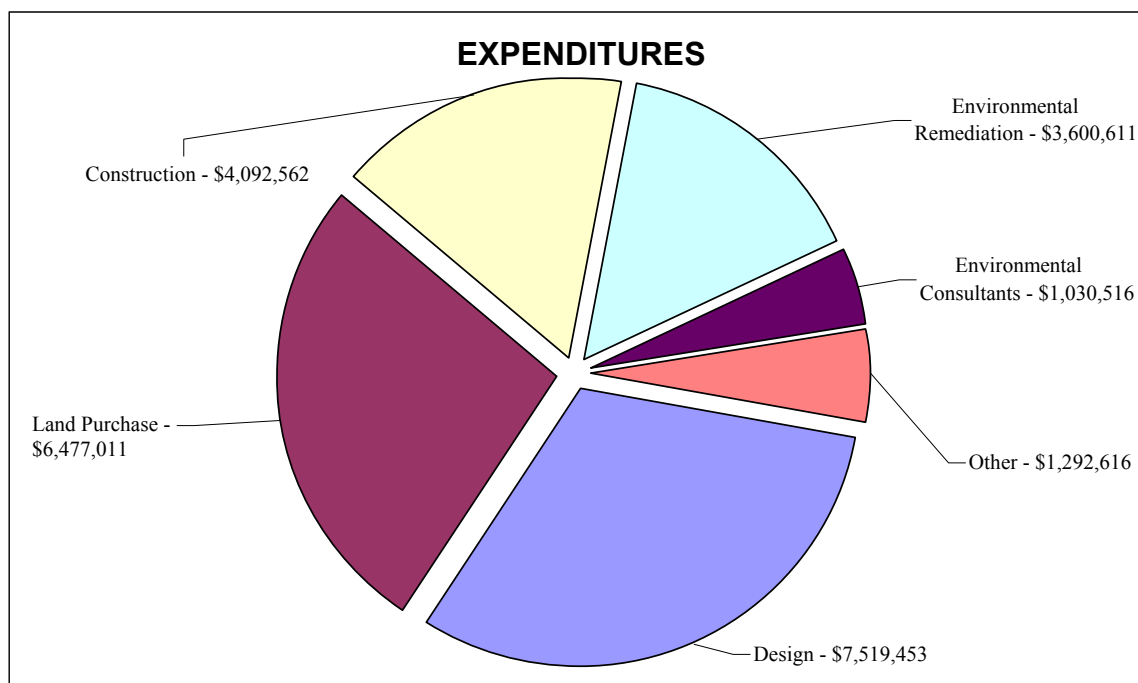
#### ***SOURCE OF FUNDS***

On April 27, 1999, the City council passed a resolution to submit to the City of Shreveport voters a proposition to issue \$87,000,000 in 20-year general obligation bonds of which \$85,000,000 would be used for a convention center. On July 17, 1999, voters approved the convention center proposition. The City received the bond proceeds for the convention center on December 16, 1999. The City has held these funds in interest-bearing accounts since 1999 and earned interest of \$12,899,015. In addition, the City sold the “American Tower” and dedicated the proceeds of \$2,990,805 to the construction of the convention center. The City also received \$4,500,000 from the City’s construction contractor and insurance bonding company. The City entered into a construction management agreement with Whitaker Construction Company, Inc., covering construction of the convention center. Safeco Insurance Company issued a performance and payment bond in connection with the construction management agreement naming the City as obligee and Whitaker as principal. Thereafter, Whitaker was placed in involuntary bankruptcy proceeding by certain of its creditors on August 9, 2002. On September 12, 2002, Whitaker converted the involuntary bankruptcy proceeding into a voluntary Chapter 11 proceeding. Thereafter, on or about September 1, 2003, the City, Whitaker, and Safeco entered into a settlement agreement whereby Safeco paid the City \$4,500,000 in full and final settlement of all claims by the City against Safeco in connection with the convention center project and the construction management agreement. In total, the City had \$105,253,920 available for the convention center project.



### ***EXPENDITURES***

As of September 5, 2003, the City has expended \$24,012,769 on the convention center project; 31% for design engineering, 27% for the purchase of land, 17% for construction, and 19% for environmental remediation and consultation. The remaining 6% was spent on legal fees, demolition, fencing, and miscellaneous expenses. In addition, the City has paid \$8,470,000 in principal and \$15,838,592 in interest on the bonds.



## DESIGN COSTS

The largest share of the costs to date, apart from interest expense,<sup>2</sup> has been related to the design of the convention center. On August 1, 1999, the City entered into a contract for design services with Slack, Alost, Miremont, and Associates<sup>3</sup> (SAM), a professional corporation of architects and engineers. The contract totaling \$8,227,185 included \$4,296,000 for basic compensation and \$3,931,185 for additional services. SAM's contract price includes SAM's internal charges for work performed by SAM employees and also charges for subcontractors hired by SAM to meet its obligations. Since August 1999, changes to the original contract have increased SAM's contract from \$8,227,185 to \$9,490,881, an increase of 15%. The City has paid SAM \$7,519,453 as of September 5, 2003.

### ARCHITECT CONTRACT

The contract provides for SAM to perform both basic and additional services allocated in various phases of the project including:

- Design - schematic design and development; drawings; other documents to illustrate the scale and relationship of project components; definition of architectural, structural, mechanical, material, and other elements required; program schedule and budget
- Documents - define in detail the requirements for construction of the project. SAM was to assist the City in preparing bidding information, bidding forms, and the form of agreement between the City and contractor
- Review
- Bidding and negotiation - SAM assists the City in obtaining bids or negotiated proposals and assists in awarding the contracts for construction
- Construction administration - SAM observes contractor's work, evaluates the quality, and advises the City when the jobs are properly completed and ready for payment

The contract's provisions for compensation are broken down into categories: basic services, project representation beyond basic services, additional services of the architect, and additional services of consultants. However, the actual computation of progress payments on the contract is unclear. In one instance the contract refers to lump-sum basis, another instance refers to lump-sum basis and current billing rates adjusted for inflation, while a third instance refers to a cost-plus computation.

According to Article 11.3.1 of the contract, basic services of SAM are compensated as follows:

*. . . All Basic Services are provided on a lump sum basis . . .*

<sup>2</sup> The City has paid \$15,838,592 in interest on its 20-year general obligation bonds.

<sup>3</sup> Slack, Alost, Miremont and Associates later became Slack, Alost, MsSwain and Associates.

Additional services not specified as part of the basic services are described in Article 3 of the contract. These services include project representation beyond basic services, eight “contingent additional services,” and twenty “optional additional services.” Article 11.3 of the contract provides that SAM shall be compensated for the project representation beyond basic services:

*All services additional to Basic Services are provided on a lump sum basis . . .*

Project representation beyond basic services is described in section 3.2 as the architect providing one or more project representatives to assist in carrying out additional onsite responsibilities to provide further protection for the City against defects and deficiencies in the work.

Article 11.3.2 provides for payment of additional services of the architect as:

*. . . on a lump sum basis for labor and cost to perform tasks. Current firm billing rates will apply, adjusted annually for inflation.*

Article 11.3.3 provides for SAM’s compensation of additional services of consultants:

*For additional services of consultants, including additional structural, mechanical and electrical engineering services and those provided under subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of (1.10) times the amounts billed to the Architect for such services.*

In accordance with the terms of the contract, basic and additional services are to be compensated as these services are provided at SAM’s current billing rates. Subcontractor (consultant) fees are to be billed at cost plus 10%. Services agreed upon but not covered in the contract require a change order thereby increasing the overall contract amount.

During our examination, we found that:

1. The City allowed a 25% markup based on a complexity factor to be included in the architect’s fee though no documentation supported such an increase.
2. The City did not require the architect to specify the amounts being charged for the services of subcontractors or require the architect to demonstrate how such charges were derived and whether they were supported by subcontractor charges to the architect. In addition, the City did not require that the architect provide written documentation or work product of the subcontractors thereby demonstrating the value and quality of these services.

### **Computation of Architect’s Fee**

In the contract, basic compensation is calculated using the State of Louisiana capital improvements manual fee formula that calculates the architect’s fee as a percentage of the construction cost. Using the estimated construction cost of the convention center of \$71,343,161, the architect’s fees should equal approximately 5.4% of the cost of construction. SAM’s total contract of \$8,227,185 is approximately 11.5% of estimated construction cost. The difference is due to SAM marking up its calculated charges by 25% for additional complexity

and the \$3.9 million in additional services. The increase for the complexity factor would add more than \$800,000 to the contract. We were provided no documentation to support the use of this increase. We informed SAM that our understanding was that the complexity factor is normally only used for renovation contracts and not new construction. SAM responded that “The use of the 1.25 multiplier was approved by the city to respond to the scale and complexity of the project.” No further documentation for this \$800,000 increase was provided.

The additional services included services to be performed by SAM and subcontractors hired by SAM. Though SAM is allowed to employ subcontractors and mark up subcontractor charges, neither the City nor SAM could provide documentation to substantiate the amounts charged to the City or the quality of these subcontractor services. Lack of such documentation prevented the City from ensuring that it is paying the proper amount and receiving services commensurate with the fees paid. In a March 8, 1999, letter to the City, SAM listed 12 subcontractors that SAM intended to employ. In a report dated June 2, 2003, SAM reported paying 23 subcontractors a total of \$4,128,830, which includes \$3,879,716 in fees and \$249,114 in reimbursable expenses. SAM’s contract with the City allows SAM to mark up consultant (subcontractor) fees by 10%.<sup>5</sup>

In an attempt to compare the actual markup against the markup allowed by contract, the legislative auditor requested that SAM provide a reconciliation of subcontractor invoices to SAM’s billings to the City.

Mr. Stephen Byrne, a consultant of SAM, wrote:<sup>6</sup>

*Pursuant to our meeting and conversation of last week please be advised that my client does not maintain their billing records in the manner requested by you. Billings to the City of Shreveport were based upon the contract with the City, services provided by various parties, and the percentage of completion as determined by the expertise of my client . . .*

In response to the same query, Mr. Michael Alost, a SAM partner, stated:

*When SAM invoices the City, they get a global position of the whole project team and invoice based on that percentage of completion. Subcontractors sometimes over invoice (more than the percentage of completion), so they pay the subcontractors according to where they feel the subcontractors are on the project. SAM does not have a way to numerically track subcontractor invoices to SAM’s billings to the City.*

Based on the responses provided, it appears that SAM does not base its charges for work performed by subcontractors on the amount charged by the subcontractor plus a markup. Rather, SAM bases its charges on its estimate of completion of the total project.

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<sup>5</sup> Contract Article 11.3.3

<sup>6</sup> Excerpt from a letter dated July 22, 2003



## **SAM'S SUBCONTRACTORS**

SAM subcontracted with 23 companies to meet its obligations under the contract with the City. In three cases, there was little documented work product produced by these subcontractors that would have afforded the City the opportunity to ensure that it paid only for services actually received and for services meeting expected quality standards.

### **Morlok Development Group**

SAM hired a subcontractor, Morlok Development Group. SAM paid Morlok Development Group \$210,463, which includes \$168,025 for fees and \$42,438 for reimbursable expenses. Morlok also hired subcontractors and paid PKF Consulting \$29,000 and Morgan Keegan \$5,000.

Mr. William Morlok, CEO, stated that he is a business consultant who specializes in public/private partnerships. His focus was the business plan for the convention center. He has no written work product available because his work was included in SAM's work product. PKF, one of his subcontractors, did produce a report. When we requested that SAM produce the work product of Morlok, Mr. Allost pointed us to the PKF report only. It should be noted that the PKF report represents only 14% of the amount paid by SAM to Morlok. According to Mr. Morlok, Morgan Keegan offered advice for financing but did not produce a written work product.

### **Access Development, LLC**

In 1999, SAM contracted Mr. Dan Wimberly of Access Development, LLC. In a March 1999 letter to the City, Mr. Allost stated the following:

*... As a business consultant and developer, Dan will provide consulting to the team through Phase I. He will support the team in site selection and evaluation of ancillary projects such as hotels or other private ventures. He will also develop a plan to extend economic development opportunity to the community at large and the minority community in particular. This plan will be implemented by Dan during Phases II and III of the project ...*

Mr. Wimberly's contract totaled \$400,000 of which he has been paid \$284,594 to date. The \$400,000 was computed using 30 months' pay at \$10,834 per month plus 12 months at \$6,250 per month.

The only work product that Mr. Wimberly provided to us was an 18 page "Minority Contractors Sourcebook 2000" that listed 29 minority contractors, their contact information, association memberships, their bonding capacity, number of employees, amount of liability insurance, and their specialty. He did not provide "... a plan to extend economic development opportunity to the community ..." as stated in Mr. Allost's letter.

According to Mr. Wimberly, he runs Urban Housing, a nonprofit LLC, and is the only employee of Access Development, LLC. Mr. Wimberly stated that though he did not track the number of hours he spent on each task, he spent an enormous amount of time on the convention center. He added that it took 100% of his time because he was always thinking about the project.

Mr. Alost stated that he hired Mr. Wimberly in response to Mayor Hightower's desire to include minorities in the convention center project. Mr. Alost also stated that Mr. Wimberly provided liaison services between the minority construction community and SAM. Furthermore, Mr. Alost stated that Mr. Wimberly set up meetings and luncheons, but his focus was on the construction phase.

### **JaLi'Ve Enterprises, LLC**

SAM hired JaLi'Ve Enterprises, LLC to assist in communicating issues related to the project to Shreveport voters and the media. In the letter dated March 8, 1999, to Mr. Kenneth Antee, Chief Administrative Officer for the City of Shreveport, Mr. Alost stated:

*. . . JaLi've Enterprises, LLC; Project communication with the community will be coordinated by this consulting firm. Working within the legal requirements for a public information campaign, this group will help the project team and the Mayor's Committee, the Administration and the Council to communicate the issues of this project to Shreveport voters and media . . .*

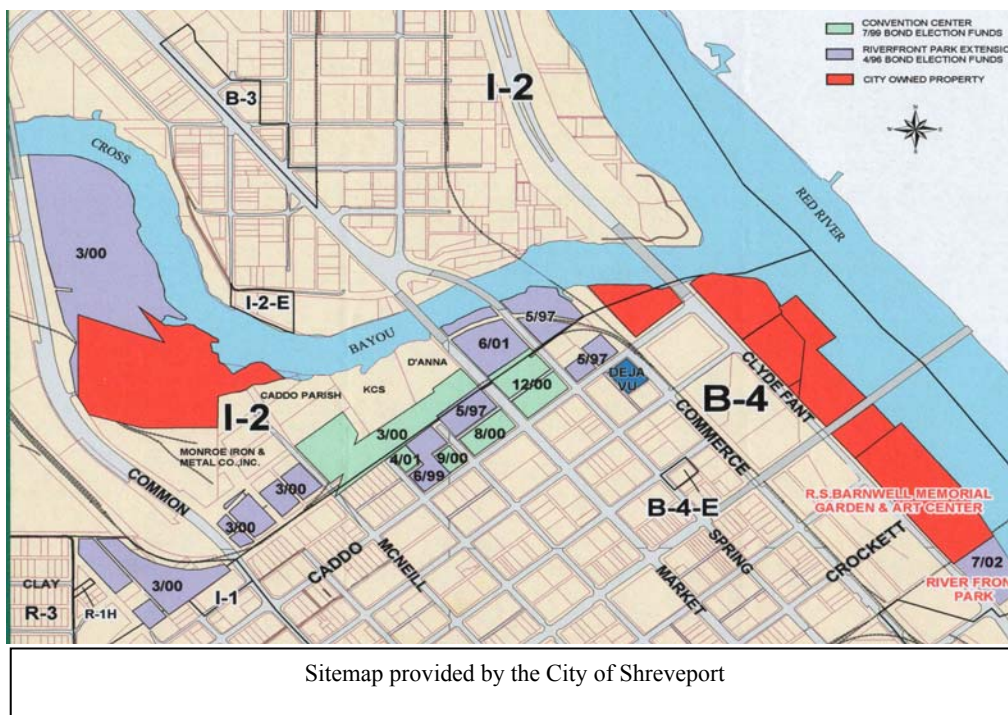
SAM paid JaLi'Ve \$223,927 in fees and \$4,226 for reimbursable expenses for a total of \$228,153 on a \$320,000 contract. Ms. Janie Samuels, Executive Officer, and Ms. Lillian Priest, Marketing and Development Officer, stated that they kept track of their hours for billing purposes but discarded this record of their number of hours once the invoice was paid.

According to the contract, Jali'Ve was paid \$300 per hour for subconsultant services. They were also paid for project related consumable supplies, copying supplies, and postage. Ms. Samuels and Ms. Priest stated that they sent out questionnaires, set up meetings, and refined and further developed the minority directory produced by Mr. Wimberly. Mr. Alost stated that he contacted Ms. Priest to be on the team because he knew of her community involvement.

In summary, the City's contract with its architect allowed subcontractors to be paid by the City indirectly without assurance that the City received commensurate value for its public funds.

## Land Associated Costs

The City has spent \$6,380,768 for “Land Purchase” and \$96,243 for “Associated Costs” for a total of \$6,477,011. The original estimate for land acquisition was \$3,000,000.



According to city officials, litigation in acquiring the land and having to purchase larger tracts than planned account for most of the difference between the estimated and actual cost. The City purchased land using convention center bond funds and by reallocating land purchased for the Riverfront Park extension project. However, should the City continue its plans to use land purchased for the Riverfront Park, the City will be required to reimburse \$539,480 to this fund.

## Riverfront Park Bond Funds

In April 1996, the voters approved a \$5,000,000 bond issue for the purpose of acquiring and/or improving lands for a public park to the extent feasible for the Riverfront Park Extension.

Mayor Keith Hightower in a letter dated March 4, 2003, to Mr. Grover Austin, First Assistant Legislative Auditor, stated in part:

... you requested that we identify all Convention Center expenses including those made from the Riverfront Park Extension bond issue project. As of January 31, 2003, the City has spent \$1,236,950 for land purchases and related costs from this proposition which can be attributed to land which will form the Convention Center site. Since the Riverfront bond proposition was approved in 1996, other riverfront properties not a part of the Convention Center site were also purchased from this bond proposition . . .

On March 13, 2003, the City transferred \$697,470 from the convention center project to reimburse the Riverfront Park project for land to be used for the convention center. According to Mr. Kenneth R. Antee, Jr., Chief Administrative Officer, another \$281,500 was an allocated share of land purchased from Union Pacific Railroad. The remaining \$257,980 is land designated as the site for the convention center hotel. The City has not reimbursed the Riverfront Park project for the \$281,500 nor the \$257,980, a total of \$539,480.

## **Construction Costs**

As of September 5, 2003, the City has spent \$4,092,562 for "Construction." The bulk of these payments were \$1,130,549 to CW&W Contractors for railroad relocation, \$1,240,971 to Wicker Construction for utility relocation, and \$1,400,863 to Whitaker Construction, the city's general contractor on the project. The planned location of the convention center necessitated the relocation of the Union Pacific Railroad spur and the water, sewer, and electrical utilities.

The payments to Whitaker Construction included \$1,000,863 for preconstruction and \$400,000 for "Delay Damage." "Delay Damage" was negotiated between Whitaker Construction and the City to compensate for costs absorbed by Whitaker because of delays caused by the City.

## **Environmental Remediation Costs**

The City also entered into agreements with two environmental engineers, Jones Environmental and ALTEC Environmental Consultants. These agreements included the following deficiencies:

- Though a portion of the work was construction, the agreements were not written contracts as required by state law, R.S. 38:2241 A.(1).<sup>7</sup>
- Contractors and subcontractors were not required to post performance bonds protecting the City from loss.
- The environmental engineer hired by the City hired subcontractors to do work that is considered (Attorney General Opinion No. 03-0108) "public works," which is required by state law to be competitively bid; state law was not followed.
- The environmental engineer hired a subcontractor. Then the subcontractor hired a subcontractor. This relationship resulted in multiple-cost markups.

In March 2000, the City hired Lemle & Kelleher, L.L.P., Attorney at Law (L&K), to represent the City in environmental issues related to the convention center. On behalf of the City, L&K hired ALTEC Environmental Consultants, Inc., Roy W. Dowling, President, to do the environmental work.

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<sup>7</sup> R.S. 38:2241 A.(1) provides, in part, that whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties.

As of September 5, 2003, the City has paid \$3,600,611 for environmental remediation of which \$2,809,866 was paid to ALTEC. Although there was no written contract, ALTEC was expected by the City to charge for its services and the services of subcontractors hired by ALTEC. A written contract would have given the City the opportunity to specifically state the expectations of services to be provided, expected deliverables, the dates services were to be delivered, performance bond requirements, the specific markup allowed for subcontractor fees, and the required documentation for payment. According to Mr. Antee, the City believed that ALTEC would mark up its subcontractor fees by 10%; ALTEC's actual markup averaged 20% or \$197,533 more than agreed.

In March 2000, the City adopted the resolution to hire Mr. Timothy Hardy and Ms. Veronica Matthews of the law firm L&K to represent the City in matters involving environmental issues relating to the proposed Shreveport Convention Center project. According to Mr. Hardy, the City was engaged in expropriation litigation. He stated that it was important that environmental consultants be hired through an attorney so that the consultant's work product would be covered by attorney-client privilege.

Mr. Antee stated that Mr. Hardy selected ALTEC after it was noted that Jones Environmental, an environmental firm previously hired by SAM, charged 20% to 30% more than ALTEC for the same kind of work. Mr. Hardy stated that he did not choose ALTEC but rather acted upon the City's recommendation. Subsequently, ALTEC became the exclusive environmental consultant for the convention center project.

Of the total paid to ALTEC, at least \$1,974,673 (70%) was for other charges. Other charges includes work done by subcontractors, equipment, and supplies. ALTEC marked up other charges from 10% to 40% for an average of 20%. ALTEC received approximately \$395,000 for management and administration of work done by subcontractors.

Mr. Antee stated that ALTEC agreed to a 10% markup of other charges. Based on this non-written agreement, ALTEC was overpaid approximately \$197,533--the difference between \$395,000 (a 20% markup) and \$197,467 (a 10% markup).



#### American Fleet Services

One of ALTEC's subcontractors was American Fleet Services of Louisiana, L.L.C., (AFS). From written quotations, ALTEC selected AFS for dirt hauling. AFS is jointly permitted with J. D. Caver by the Louisiana Public Service Commission to transport nonhazardous industrial waste. AFS subcontracted the actual dirt hauling to J. D. Caver. J. D. Caver charged AFS \$357,330. Other subcontractors to AFS charged AFS \$57,441. On the total of \$414,771, AFS charged ALTEC \$459,013

(a 10% markup), and ALTEC charged the City \$537,847 (a 17% markup). Though written quotes were obtained, these services were not properly bid by the City in accordance with the

public bid law (R.S. 38:2212). The City should have contracted directly with the lowest responsible bidder.

### Tri State Environmental

ALTEC hired Tri State Environmental Contractors, Inc., to perform work related to ALTEC's agreement with the City. Tri State Environmental charged ALTEC \$86,229 for subcontract work. ALTEC marked up those costs 16% for a total of \$99,835. According to Mr. Roy Dowling, he and Mr. Bobby Raines own ALTEC. In addition, he, Mr. Raines, and Mr. Gary Larey own Tri State Environmental.



### Public Bid Law

A portion of the work performed by ALTEC fits the definition of “public work”<sup>8</sup> as defined in R.S. 38:2211A. This work included the removal and disposal of contaminated soil and the back fill with uncontaminated soil. This work should have been let to the lowest responsible bidder in accordance with the public bid law [R.S. 38:2212 A.(1)(a)<sup>9</sup>]. Mayor Hightower and Mr. Antee stated that ALTEC's work was a professional service contract that did not require bidding. The City obtained Attorney General's Opinion 03-108 that stated in part:

*... A contract to retain professionals to perform environmental studies and investigations constitutes a contract for services and is not subject to Louisiana Public Bid Law. However, work associated with the implementation of the remedial plan developed by the professionals and which included the removal of contaminated soil and the fill of new material to bring the site up to grade would constitute a public works project and would require compliance with Public Bid Law if the total cost exceeded the contract limit of \$100,000 . . .*

Therefore, this work should have been bid in accordance with state law with the objective of obtaining the lowest competitive price. In addition, the work should have been performed in accordance with a written contract and the contractor should have met certain requirements.

<sup>8</sup> “Public work” means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

<sup>9</sup> R.S. 38:2212 A.(1)(a) All public work exceeding the contract limit (\$100,000) as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised, and no such public work shall be done except as provided in this Part.

R.S. 38:2241 A.(1) provides, in part, that whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties. In addition, the public bid law mandates certain requirements of the general contractor to reduce the risk to the public entity and ensure the good and faithful service of the contractor. These requirements, in part, require that the contract include a description of work to be performed, completion dates, and performance terms, and licensure by the Louisiana State Licensing Board for Contractors. R.S. 38:2241 A.(2) states that public contracts in excess of \$25,000 shall require of the contractor a bond with good, solvent, and sufficient surety in a sum of not less than 50% of the contract price for the payment by the contractor or subcontractor to claimants. By allowing L&K to hire ALTEC who hired various contractors to perform public work and not having a written contract and requiring performance bonds, the City placed itself at undue risk and failed to comply with state law.

The City failed to properly monitor ALTEC's billings. ALTEC's invoices were reviewed by Mr. Antee, Mr. Hardy, and Mr. Wes Wyche, an environmental affairs specialist for the City. However, no one compared ALTEC's subcontractor charges to ALTEC's charges to the City.

### **Current Status of the Project**

On October 16, 2003, the City received a low bid of \$65,384,000 for construction of the convention center and parking garage. Construction is scheduled to begin shortly.





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# Recommendations

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The City of Shreveport should appropriately monitor the expenditure of public funds in the completion of its convention center project by:

- (1) complying with the public bid law;
- (2) determining the appropriateness of the architect's 25% complexity factor markup and appropriately documenting this determination;
- (3) ensuring all work invoiced is accomplished and adequate supporting documents have been received before payment is made;
- (4) requiring adequate documentation from contractors to support their billings and work performed and the billings and work of subcontractors; this documentation should be sufficient to enable the City to ensure that it has received services commensurate with the public funds expended;
- (5) seeking the refund of \$197,533 from ALTEC for the overpayment on its markup;
- (6) determining the exact cost of land allocated to the convention center from the Riverfront Park extension project and reimbursing the proper amount;
- (7) ensuring all contracts are in writing and include a description of work to be performed, the work to be done by related parties, related parties' markups, completion dates, performance terms, and licensure by the Louisiana State Licensing Board; and
- (8) consulting with the state Office of Facility Planning for guidance in developing architectural contracts.



# Attachment I

## Management's Response

Management's response included several exhibits including:

- Letter from Attorney General Richard Ieyoub to Mayor Keith Hightower
- Letter from SAM to Mr. Ken Antee
- Letter from Mr. Ken Antee to Jones Environmental, Inc.
- Letter from ALTEC to Mr. Ken Antee
- Letter from JaLi've to Mr. Ken Antee

These exhibits are available for inspection at the Office of the Legislative Auditor, Baton Rouge.



**OFFICE OF THE MAYOR  
SHREVEPORT, LOUISIANA**

**KEITH HIGHTOWER  
MAYOR**

**POST OFFICE BOX 31109  
SHREVEPORT, LA 71130  
(318) 673-5050/(318) 673-5085 (FAX)**

December 8, 2003

Mr. Grover Austin  
First Assistant Legislative Auditor  
Louisiana Office of the Legislative Auditor  
1600 North 3<sup>rd</sup> Street  
Baton Rouge, LA 70804

Dear Mr. Austin:

Please find enclosed the City's response to the State Legislative audit report on the Convention Center. A copy without attachments had previously been faxed to Dupree Parker.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Hightower", is written over a horizontal line.

Keith Hightower  
Mayor

KH/nr

Enclosure



## **CITY OF SHREVEPORT'S RESPONSE EXECUTIVE SUMMARY**

### **Response to Findings**

The City agrees that "the project has been hampered by delays" and has been a complicated project as a result of necessary legal actions, extensive environmental remediation, and an unexpected financial collapse of the Construction Manager. However, the City strongly disagrees that there has been "poor accountability, and a possible violation of the public bid law."

The City's original environmental consultant, Jones Environmental, Inc. (JEI), estimated the remediation costs at approximately \$5 million. After the City became concerned with lack of quality with the work product and the excessive charges and estimates of JEI, the City replaced JEI with Altec. Altec completed the remediation and site work for a savings to the City of \$3.29 million.

The City, through the aggressive actions of the Mayor and his administration, received \$4,500,000 from the contractor's bonding company. Additionally, the cost for the Convention Center and Garage was approximately \$6,000,000 less than the original contract. The taxpayers have received an approximate savings of \$10.5 million in construction costs alone. These aggressive actions and savings of approximately \$13.8 million are hardly a result of "poor accountability."

### **Response to Recommendations**

The City agrees with the recommendations of the Auditor but takes issue with two of the recommendations.

- The City believes that the architect's 25% complexity factor is appropriate because the services provided were more than core architecture and engineering services. In addition to these standard services, the design team acted as a project manager to assist in site location, environmental issues, railroad relocation, hotel development options and other valuable necessary services.
- The City's agreement with Altec of 10% markup was only for reimbursable expenses as described in an ordinary architect/engineering contract (i.e., copies, analytical testing, etc.). The City was provided by Altec with a scope of work and budget estimate for all other work and did not have an agreement regarding "markup" for any of that work.
- Ken Antee (Chief Administrative Officer ) has stated on numerous occasions that he reached an agreement with Altec that "markups" would only be 10%. However, he believes that there has been a misunderstanding as to the definition of "markups." It was never the intention of Ken Antee nor Altec that their fee and general condition would be limited to 10%.

## RESPONSE TO FINDINGS

### I.

#### Public Bid Laws and Environmental Remediation

Environmental remediation for public entities throughout the state is routinely handled as a professional service with a certified environmental consultant/engineer. The City of Shreveport had as part of its original design team an environmental consultant, Jones Environmental (JEI). JEI began the original Phase I on the site when it was selected. The City acted in the same way as other municipalities and state agencies when undergoing environmental remediation. After the State Legislative Auditor inquired as to the remediation process the City requested an opinion from the State Attorney General to determine the applicability of the State Public Bid Laws. Richard P. Ieyoub, State Attorney General, ultimately opined, "In view of what appears to be quite a bit of uncertainty concerning the application of the bid law in this particular instance, I believe that there needs to be legislation clarifying the matter." Attached is the November 12, 2003, letter from Richard Ieyoub as exhibit "A". This is a totally different interpretation than the opinion expressed by the auditors.

The environmental remediation process was handled by Mr. Mike Strong, Director of Operational Services for the City of Shreveport. Mr. Strong had previously served as the Assistant Secretary of Waste Services for the Louisiana Department of Environmental Quality and was very familiar with environmental remediation procedures within the State of Louisiana.

The City of Shreveport officials acted in a manner that was completely consistent with other state and municipal agencies in the remediation process of the convention center site.

### II.

#### Design Costs/Complexity Factor

The City believes that the architect's 25% complexity factor is appropriate because the services provided were more than core architecture and engineering services. In addition to these standard services, the design team acted as a project manager to assist in site location, environmental issues, railroad relocation issues, hotel development options and other valuable services. The **lump sum** fee negotiated was done so with the anticipation that the services requested of Slack, Alost, and McSwain (SAM) and their team went way beyond the mere design of a building.

The City's contract form was used for the architect contract which is based on the American Institute of Architects. The contract agreement is for services provided on a **lump sum** basis. Language in the contract referencing the State fee formula served only to explain the method of calculation from which the **lump sum** fee was established. Article 11.2.1 of the Contract states, in part, that "All Basic Services are provided on a lump sum basis." It then explains that the **lump sum** amount was derived in negotiations based on the State of Louisiana's fee formula. However, due to the complexity of the project, the City agreed that a 1.25 complexity factor was appropriate in order to determine the lump sum fee specified in our contract for basic services. The City has changed the practice of using a "percentage fee" contract for architectural contracts that has been used by prior administrations. Therefore, the **lump sum** fee was used.

On page 6 of the report the Auditor indicates that there are three categories in the contract for providing compensation. There are in fact four categories in the contract which provide for compensation and are all **lump sum** as enumerated in the contract. These are:

- (1) Basic Services (see Article 2 and Article 11 and Sections 11.2.1 and 11.2.2)
- (2) Identified Additional Services (see Article 3 and Article 12 and Article 11.3.1)
- (3) New Additional Services by the Architect (see Article 11.3.2); and
- (4) New Additional Services by Consultants (see Article 11.3.3).

The City's contract form identifies Basic Services in Article 2. Compensation for these Basic Services is fixed as a **lump sum** in Article 11, sections 11.2.1 and 11.2.2.

The City's contract form identifies Additional Services in Article 3. Both SAM and the City anticipated a landmark project of significant scale and complexity. SAM proposed additional services to the City to address issues outside the core architecture and engineering services which are covered as Basic Services in Article 2 of the Contract. In the negotiations, the City agreed that most of the proposed Additional Services were important for the success of this complex project. At the beginning of the project, SAM negotiated a **lump sum** amount with the City for these Additional Services which the City accepted. Compensation for these defined services is established as a **lump sum** amount in section 11.3.1. Both the **lump sum** fee for Basic Services and the **lump sum** fee for those Additional Services include the amounts SAM paid and will pay to consultants for their participation in those services. SAM's contract has been a matter of public record for over four years.

As with any project, there are unforeseen challenges. The City's contract provides a method of compensating the design team if they are called on to perform work outside the scope of the original contract. These services are also called Additional Services and the method of compensation for these is defined in section 11.3.2 for SAM and 11.3.3 for its consultants. The Auditor has confused the application of these sections with the entire compensation structure, assuming that the City had no means to control the cost of SAM's services, or to monitor the quality of its work.

With regard to new additional services by consultants, Article 11.3.3 provides for a multiple of 1.10. This multiple only applies to new additional services of consultants and not to the contract as a whole as stated by the Auditor. An amendment to SAM's contract on a **lump sum** basis must be obtained and signed by the City before it can proceed with any new service including those provided by its consultants.

There have been plenty of challenges to address. SAM anticipated a two-year duration from the start of this work to the Bidding Phase. In fact, the time line has extended now to almost five years duration. In that time SAM has addressed multiple changes to the original scope of services including:

- Extended duration for land acquisition
- Extended duration for environmental clean up
- Extended duration for utility relocation
- Relocation of the Union Pacific rail line
- Change by the City from a General Contractor delivery to a Construction Manager delivery
- Default of the City's original Construction Manager
- Redesign of the foundation system due to unforeseen site conditions
- Proposals from an alternate Construction Manager

New Garage drawings demanded by the alternate Construction Manager  
Multiple package bidding (over 40) by the alternate Construction Manager  
Negotiations with the Surety Company who covered the original Construction Manager  
Re-bidding of multiple packages by the alternate Construction Manager  
Settlement with the Surety  
Change from Construction Manager delivery back to General Contractor delivery  
Re-issue the entire project to General Contractors for **lump sum** public bidding.

The services of SAM throughout this project have been much more than merely designing a building and, as such, the City believes that the **lump sum** fee agreed to was and is reasonable for the services received.

### **III.**

#### **SAM's Subcontractors**

Twenty-three firms performed service under SAM's contract. SAM managed the work in its office and is responsible for the performance of consultants. SAM estimates that over 100 architects, engineers, specialists, and staff have been engaged in its team's work in the last 4 ½ years. Using simple math, SAM anticipates that over 100,000 man hours have been invested by its firm and consultants. The quality of the team's work is apparent in its accomplishments. The following are some of these accomplishments :

- It was first in addressing the City's new Fair Share program.
- It supported the City in site selection and land expropriations to position the project for highest functional and marketing potential.
- It was instrumental in the City's successful negotiations for a convention center hotel.
- It was instrumental in the City's successful negotiations with the Surety company, helping the City avoid Surety claims and construction control by the Surety. As a result, the City recovered \$4.5 million from the Surety.
- It was instrumental in the City's negotiations with an alternate Construction Manager, resulting in the dismissal of the CM firm with significant cost savings to the City.<sup>1</sup>
- It performed the Bidding Phase of the project three separate times, with a final successful bid that saved the City millions of dollars.

Many of SAM's team members provided services that resulted in published work product. Other team members provided services that result in action taken and goals accomplished. The three consultants which the Auditor focuses criticism are Morlok Development Group, JaLi'Ve

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<sup>1</sup> You will recall that on June 17, 2003, the alternate construction manager submitted a Guaranteed Maximum Price proposal of \$81,711,691 plus an additional \$3,626,131 for alternates No. 1 and 3. The City instead has now entered into a contract with a general contractor for \$65,348,000, a difference of over \$16,000,000.



Enterprises, LLC and Access Development Group. All three of these contributed to the project and will be discussed individually.

**A. Morlok Development Group**

Morlok's business planning efforts on the hotel were instrumental in assisting the City in determining if a hotel was necessary for the ultimate operation and success of the convention center. Morlok worked with the consulting firm of PKF to determine the size, quality and business format that would be necessary to ensure the marketability and functional requirements of the convention center. As a result of Morlok's efforts the city was able to successfully negotiate a development agreement with a hotel developer that will result in a 300 room Hilton Hotel that is very essential to the long term viability of the convention center.

**B. Access Development Group**

Access Development was hired as part of the project team to assist the team in attaining significant minority and disadvantage businesses in the design and construction of the convention center. Mayor Hightower had a strong desire and commitment to include these entities in the City's largest ever capitol project. Access' duties were to develop a plan and begin the task of identifying and informing these business of the project. Mr. Wimberly organized, attended and conducted many meetings to accomplish these goals. This project was initiated prior to the City's adoption of the "Fair Share Program" that is currently in place.

**C. JaLi'Ve Enterprises**

Ja Li'Ve provided vital Fair share assistance, coordinating with the minority community, planning project events, and assisting with publications of a first-ever data base profiling minority construction businesses. Ja Li'Ve had a contract for services with SAM to provide these services as part of the project team.

The City contracted with SAM to provide all of the services necessary for the completion of the project for a lump sum fee. This fee included the services of all of its consultants.<sup>11</sup> For a complete response from Slack, Alost and McSwain please see its December 4, 2003, letter attached hereto as exhibit B.

**IV.**  
**Environmental Remediation**

The first part of this response will address specific findings included in the Legislative Auditor's report. The report findings being addressed will be in italics and the response will follow. The second part of this response will address broader areas of clarification that need to be addressed.

ALTEC complied fully with all contract requirements imposed by Lemle & Kelleher, L.L.P. (L&K) and the City of Shreveport. The project was initially field investigated, an assessment report compiled, a remedial work plan developed and approved, and the remediation

activities were completed. There were many unknowns still to be discovered during the remediation that could not be bid out, but had to be investigated and field decisions made "on the spot" by a qualified environmental consultant. This included unknown tanks, natural gas storage basins, gas wells, and zones of contamination not previously identified. This was not a normal "dirt project" as it is being characterized. If this project had not been handled in this manner, the cost to the taxpayers would have been enormous considering the delays and change orders that would have been necessary.

The City through the SAM design team originally had Jones Environmental, Inc (JEI) as its environmental consultant. After conversations with Tim Hardy and representative of the Department of Environmental Quality of the State of Louisiana the City became concerned with the costs estimates (\$5 million) and quality of work from JEI. The City retained a third party environmental consultant to review the charges being submitted by JEI. See attached Exhibit C. Altec was acting as a subconsultant on the project and had been billing the City much less for the same services than the City was receiving from JEI. The City made the decision to remove JEI and replace them with Altec.

The following points should be strongly considered by the Legislative Auditor.

- This was a complex and technically difficult project, which had many unknowns that could not be determined until excavation began. No party associated with this project had a "crystal ball" or "x-ray glasses" to see under the ground to determine the gas-holding tanks that were not exposed, gas wells that were discovered, cisterns, and depths of excavation that would be adequate to meet LDEQ requirements. Even though there was a remediation plan developed, it would be impossible to provide a design and a bid package to address these types of projects.
- A point that has not been addressed in these findings is the fact that many concurrent activities were going on that led to cost savings by having one contractor do all the work. Contaminated soil had to be removed up until the very end due to utility relocations. Therefore, this allowed ALTEC to be replacing the remediated soil and bringing the site to grade while completing the first phase. This concept has been totally overlooked or ignored during this whole process. This was not a normal "dirt" project, it was the largest voluntary remediation project ever completed in the State of Louisiana as of the date of the project.
- The process recommended by the Auditor's interpretation of the public bid laws would result in cost for the taxpayers being higher without any end-use benefit. However for this project, the transportation costs, backfill material (free!), and select fill material were the lowest that ALTEC has ever received in its 16-year history. It should also be noted that none of the companies that previously bid this project are providing these services at these low rates today. The City of Shreveport and the taxpayers benefited from an aggressive competitive process.

*Audit Report page 4. The environmental engineer hired a sub-contractor. Then the sub-contractor hired a sub-contractor. This relationship caused unreasonable cost markups.*

This is totally incorrect and will be fully explained in the American Fleet Service (AFS) section below. This part of the project was competitively bid and whatever arrangements AFS and Caver had did not change the fact that AFS/Caver provided the lowest quote received from licensed

contractors. They had bid the project for a set cost and did it for much less than the other two companies whose bids were higher (even though they have their own trucks!).

*Audit Report page 14. As of September 5, 2003, the City has paid \$3,600,611 for environmental remediation of which \$2,809,866 was paid to ALTEC. ALTEC was expected by the City to charge for its services and the services of subcontractors hired by ALTEC. Though, according to Mr. Antee, the City believed that ALTEC would mark up its subcontractor fees by 10%, ALTEC's actual markup averaged 20% or \$197,533 more than agreed.*

*Mr. Antee stated that ALTEC agreed to a 10% markup of other charges. Based on this non-written agreement, ALTEC was overpaid approximately \$197,533 – the difference between \$395,000 (a 20% markup) and \$197,467 (a 10% markup).*

The City's agreement with Altec of 10% markup was only for reimbursable expenses as described in an ordinary architect/engineering contract (i.e., copies, analytical testing, etc.). The City was provided by Altec with a scope of work and budget estimate for all work necessary to complete the remediation and did not have an agreement regarding "markup" for any other work. Ken Antee (Chief Administrative Officer ) has stated on numerous occasions that he reached an agreement with Altec that "markups" would only be 10%. However, he believes that there has been a misunderstanding as to the definition of "markups." It was never the intention of Ken Antee nor Altec that their fee and general conditions would be limited to 10%. The fee charged by Altec was well within industry standards as set forth by ZweigWhite's 2003 Fee and Billing survey.

ALTEC did charge a markup on all of its sub-contractors and supplies at rates consistent with reasonable and customary practices within the industry. ALTEC decided to make one exception to this process with regard to reducing the "markup" fee for analytical services provided by its third party laboratory. This was agreed upon after the work had begun on the project and was based on phone conversations with Mr. Antee (City of Shreveport), Bobby Raines (Vice-President of ALTEC), and Roy Dowling (President of ALTEC). In these conversations, the analytical charges were discussed and both parties mutually agreed to a 10% markup. This was agreed upon due to the large volume of samples that were going to be required to be collected during the project. This is well below the 15% to 25% markup that is the reasonable and customary practice within the industry. However, in neither conversation did ALTEC agree to any mark-ups regarding supplies, equipment, or sub-contractors. It was ALTEC's understanding that they would follow reasonable and customary practices within the industry for all other associated costs for this project. ALTEC would not have agreed to an across-the-board markup of 10% for all the other areas. This would not have even covered its insurance and overhead requirements for completing the project. A point being overlooked is that an environmental consulting firm has a high cost level for insurance and standard overhead costs that were part of these mark-ups. Please note there was not an invoice from ALTEC to the City of Shreveport that had any insurance and overhead markups at the end of the invoice. All of these charges were reasonable and customary markups within the industry.

ALTEC's true markup averaged 21% and did not violate any written or verbal agreement with L&K or the City of Shreveport. ALTEC did not overcharge the City of Shreveport for any of its services. As a matter of fact, ALTEC completed the project for \$2,809,866 (including ALTEC's site investigation, LDEQ interaction, remediation, and bringing the site up to construction grade) instead of the \$5,000,000 budget requested by Jones Environmental and the \$1,100,000 budgeted by Whitaker to bring the site to grade. ALTEC believes this was \$3,290,134 under the original

budget that the City of Shreveport was considering [\$5,000,000 (Jones Environmental estimate) + \$1,100,000 (Whitaker estimate) – \$2,809,866 (ALTEC's actual cost) = \$3,290,134 (savings by ALTEC)].

Page 14 – American Fleet Service

*One of ALTEC's subcontractors was American Fleet Services of Louisiana, L.L.C., T. Scott Pernici, owner (AFS). From a competitive bid, ALTEC selected AFS for dirt hauling. AFS, who does not have dirt hauling trucks but is licensed by the Louisiana Department of Environmental Quality to handle dirt, subcontracted the actual dirt hauling to J. D. Caver. J. D. Caver, who has trucks but does not have a license to haul contaminated dirt, charged AFS \$357,330. Other subcontractors to AFS charged AFS \$57,441. On the total of \$414,771, AFS charged ALTEC \$459,013 (a 10% markup), and ALTEC charged the City \$537,847 (a 17% markup).*

The following points need to be clarified as to the Legislative Auditor's findings:

- The Louisiana Department of Environmental Quality does not license transporters of non-hazardous soil.
- The Public Service Commission of the State of Louisiana controls these permits. The PSC License No. 1667 (contract carrier permit) is granted to J.D. Caver & Co., Inc. The license is restricted by the PSC to transport of non-hazardous industrial waste for waste manifested with American Disposal Services (owned by AFS). This is a joint permit between the two companies and, therefore, whatever financial arrangements were made between the two companies is a moot point.
- Neither company can conduct these activities without the other. They are not licensed to haul "dirt" but to transport non-hazardous industrial waste. This is a very important distinction and was thoroughly discussed with the auditors.
- ALTEC is required to subcontract only these licensed carriers for non-hazardous industrial waste. There were only four licensed carriers in northwest Louisiana at the time this project was completed. AFS & J.D. Caver, Murphy Brothers Trucking, Covington Construction Co., and Pharr Brothers Inc. Pharr Brothers indicated to ALTEC that they did not have the resources (trucks) to complete the project. **So competitive bids were obtained from the other three companies that were licensed and AFS/Caver was selected as the low bidder. This phase of the project was competitively bid and awarded.**

Written quotations were sent out to each potential contractor and the following quotations were received by ALTEC:

| Contractor      | Cost/yd <sup>3</sup><br>Site to COS landfill | Cost/yd <sup>3</sup> for<br>backhaul of clean soil | Total cost/yd <sup>3</sup> |
|-----------------|--|--|----------------------------|
| American Fleet  | \$4.75                                       | \$1.90   | \$ 6.65                    |
| Covington       | \$8.50                                       | \$4.00   | \$12.50                    |
| Murphy Brothers | \$5.00                                       | \$2.00   | \$ 7.00                    |
|                 |  |  |                            |
|                 |  |  |                            |

The auditors in the exit conference confirmed that neither AFS nor Caver did "anything wrong". To single out these subcontractors raises concerns as to the motives. There are literally dozens of subcontractors in a project such as this one and to single out one because of who owns a percentage of the entity is questionable at best.

#### Page 15 – Tri-State Environmental

*ALTEC hired Tri State Environmental to perform work related to ALTEC's agreement with the city. ALTEC later acquired Tri State Environmental in May 2002. Tri State Environmental charged ALTEC \$86,229 for subcontract work. ALTEC marked up those costs 16% for a total of \$99,835.*

The following clarifications to the auditor's findings need to be made:

- ALTEC originally subcontracted Tri-State Mechanical and Environmental Contractors, Inc. (of which neither Bobby Raines nor Roy Dowling had any ownership interest) to provide field services on the convention center site. The original company was not named Tri-State Environmental.
- ALTEC did not acquire Tri-State Mechanical and Environmental Contractors, Inc. (that company was dissolved by the previous owners). Bobby Raines, Roy Dowling, and Gary Larey (one of the previous owners of Tri-State Mechanical and Environmental Contractors, Inc.) formed a new company named Tri-State Environmental Contractors, Inc. This company was formed to enhance the synergy of the two companies and was the culmination of two years of negotiations. The City was not charged one cent more as a result of the newly formed company performing the services.

#### General Points of Clarifications

The following points are further clarifications of the audit findings by the Legislative Auditor's Office.

ALTEC kept L&K and the City of Shreveport fully informed of estimated budgets for all phases of the project. There were three budget estimates sent to L&K and the City of Shreveport from August 2001 to May 2002 for the following project phases:

- o Complete the Phase I and Phase II Assessments
- o Complete Phase I and Phase II through the remediation stage
- o After remediation was complete, ALTEC was asked to bring the site up to grade for construction.
- o The total cost estimated for these three phases by Altec was \$2,840,996.90 for completing the assessment, remediation, and bringing the site up to grade. JEI estimate \$5,000,000.00.
- o ALTEC received \$2,809,866.00 for its services during the project. This is simply amazing that ALTEC was able to estimate a project of this magnitude and complexity and still finish the project within these budget estimates! The City of Shreveport and taxpayers received a very professional project at a very reasonable cost. All parties involved were kept well informed by ALTEC as to the anticipated costs, as can be seen

from this discussion. Jones Environmental and Whitaker had previously estimated this cost to be \$6,100,000.00.

A point that seems to be lost in the entire report findings when discussing markups is that not only was ALTEC engaged at rates significantly less than those of the previous environmental contractor on the project (JEI), but the project was "fast tracked" to allow the City of Shreveport to begin construction with Whitaker at the earliest possible date. No one involved in the project could anticipate the default of Whitaker on its contract. Everyone involved was working on very demanding deadlines, which were highly scrutinized by the general public, to alleviate any other delay payments demanded by Whitaker. ALTEC never charged any overtime for its professional staff even though some weeks these individuals worked up to 70 to 75 hours on the project. ALTEC's engagement saved the City of Shreveport hundreds of thousands of dollars as per the discussion provided above. The work was of the highest professional quality (LDEQ feedback was exceptional) and was completed under extremely tight deadlines. Without question the City of Shreveport received top value for the dollars spent.

The markups on the various areas of the project ranged from 10% for analytical services, as agreed upon, to 26% for direct supplies for the project. This gives an overall markup of 21%. This markup is very consistent with reasonable and customary practices within the industry. This further demonstrates that the mark-ups were not excessive. They were appropriate and reflected the real administrative and other costs (insurance etc.) incurred by ALTEC. These costs also reflect the risks borne by ALTEC for ultimate liability for the work performed by sub-contractors. The mark-ups truly could have been higher for a "fast track" project with such extreme time line demands that the City of Shreveport required.

The City and the taxpayers got a highly trained staff for a very reasonable cost. A flat 10% markup on all work and charges across the board clearly was not anticipated by the city nor in keeping with industry standards. Ken Antee stated to Altec at the time of the discussions regarding that markup that "I don't care what the industry standards are, a 20% markup to process a bill from the lab is to much.." As a result Altec agreed to reduce it to 10%. The City believes that the auditors misunderstood that statement to include everything and that is simply not the case.

For a more thorough discussion on the operating costs for Altec refer to the attached letter from Altec dated December 2, 2003 attached hereto as exhibit D.

## **V.**

### **Land Associated Costs**

The City has made the necessary fund transfer to reimburse the Riverfront Park Bond fund from the Convention Center Bond fund for the land being used for the Convention Center. The City will make the necessary fund transfer for any property purchased with the Riverfront Park Bond money from the appropriate project fund when the property use has been determined.

## Attachment II

Attorney General's Opinion  
03-0108

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2003 La. AG LEXIS 92, \*

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF LOUISIANA

Opinion Number **03-0108**

2003 La. AG LEXIS 92

March 24, 2003

**CORE TERMS:** soil, Public Bid Law, contaminated, removal, fill, environmental studies, transportation, remedial, public works, advertised, replacement, backhaul, site, Louisiana Public Bid Law, immovable property, public entity, responsive, costing, repair, lowest bidder, new material, quotations, bid, lowest, bidder, grade

**SYLLABUS:**

**[\*1]**

90-A-1 Public Funds & Public Contracts

R.S. 38: 2211(11);

R.S. 38:2212A(1)(a) & (d);

R.S. 38: 2212. 1A(1)(a) & (b);

Professional contracts entered into by the City of Shreveport to perform environmental studies and investigations are for services and are not subject to the Public Bid Law. Public Bid Law is applicable to contracts relating to the removal and transportation of contaminated soil and backhaul of replacement soil.

**REQUESTBY:**

Honorable Keith Hightower, Mayor  
City of Shreveport  
P.O. Box 31109  
Shreveport, LA 71130

**OPINIONBY:**

RICHARD P. IEYOUB, Attorney General; RICHARD L. MCGIMSEY, Assistant Attorney General

**OPINION:**

On behalf of the City of Shreveport you have requested the opinion of this office on the applicability of the Public Bid Law to the employment of engineers, geologists and other professionals retained by the City of Shreveport and who performed environmental studies and investigations of properties purchased by the City for the possible use for construction of a Convention Center and garage. You have also asked whether the Public Bid Law applied to certain contracts relating to the remedial plan developed by the professionals and approved by the Louisiana Department of Environmental Quality. **[\*2]** The remedial plan included the removal of existing contaminated soil from the site and the supply of new fill material to bring the site up to grade for construction. The City obtained at least three (3) quotes for both the removal of the contaminated soil and the supply of new fill material. The award of each was given to the lowest bidder. Attached to your request was a copy of the following:



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1. Various correspondence from the professionals associated with the project;
2. Scope of Work prepared for the professional services required;
3. Cost Quotations for transportation of contaminated soil and backhaul of replacement soil;
4. Cost Quotations for purchasing select fill material and transportation;
5. Summary of Events dated March 7, 2003, with attached project invoice spreadsheet summary.

Under the Public Bid Law, contracts for public works projects costing \$ 100,000 or more must be advertised and let by contract to the lowest responsible and responsive bidder. Public works means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. LSA-R.S. 38:2212A (1)(a) & (d) and [\*3] 38:2211(11).

Contracts for the purchase of material and supplies exceeding \$ 15,000 must be advertised and let by contract to the lowest responsible and responsive bidder. Contracts for purchases of materials and supplies costing \$ 7,500 or more, but less than \$ 15,000, must be made by obtaining no fewer than three telephone or fax quotations on the same specifications for the desired purchase. R.S. 38:2212.1A(1)(a) & (b). There are no provisions which set forth procurement requirements for smaller purchases.

While the City of Shreveport is subject to the Louisiana Public Bid Law when contracting for public works or the purchase of materials and supplies, our courts have held that contracts for services, professional or otherwise, are not subject to the requirements of that statute. Lafourche Parish Water District No. 1 v. Carl Heck Engineers, Inc. (La. App. 1<st> Cir. 1977) 346 So.2d 769; BFI, Inc. v. City of Monroe (La. App. 2d Cir. 1985) 465 So.2d 882. A contract to retain professionals to perform environmental studies and investigations constitutes a contract for services and is not subject to the Louisiana Public **[\*4]** Bid Law.

However, work associated with the implementation of the remedial plan developed by the professionals and which included the removal of contaminated soil and the fill of new material to bring the site up to grade would constitute a public works project and would require compliance with the Public Bid Law if the total cost exceeded the contract limit of \$ 100,000. The removal of soil and fill of new material meets the definition of public work in that such work relates to the "improvement or repair of ... immovable property owned ... by a public entity." While the City did engage in a competitive bid process by obtaining written quotations for the work and awarded the contract to the lowest bidder the Public Bid Law requires public works projects of this description and this amount to be advertised and subject to sealed bids.

This office is of the opinion that the professional contracts to perform environmental studies and investigations are for services and are not subject to the Public Bid Law. Contracts for the implementation of the remedial plan requiring transportation of contaminated soil and backhaul of replacement soil must be executed in accordance with Public **[\*5]** Bid Law.

We trust that this answers your inquiry.

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